

REMARKS

The examiner has required restriction of the present application to a single invention, to be selected from among Groups I-XII as defined in the office action. Applicants respectfully traverse this requirement.

In contrast to the examiner's conclusion regarding lack of unity between a protein and the nucleic acid sequence coding for that protein, Example 17 of the PCT Administrative Instructions indicates that

Expression of the DNA sequence in a host results in the production of a protein which is determined by the DNA sequence. The protein and the DNA sequence exhibit corresponding special technical features. Unity between claims [drawn to the DNA sequence and the protein] is accepted.

Accordingly, unity of invention is present between a claim drawn to a protein and a claim drawn to the DNA sequence coding for that protein.

Furthermore,

to ... aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR §1.141 *et seq.* and permit a reasonable number of ... nucleotide sequences to be claimed in a single application.

Accordingly, in most cases, up to ten (10) independent and distinct nucleotide sequences will be examined in a single application without restriction.

1192 O.G. 68 (November 19, 1996). The examiner has created Groups for each of the three nucleotide sequences presently claimed, without providing reasons as to why the present circumstances support deviation from stated USPTO procedures. In light of the above remarks, applicants respectfully request that, at the least, Groups I-VIII be rejoined and examined together.

HEINZ et al., Serial No.09/980,468

The examiner further bases the finding on unity of invention on the presence of "a delta-6 desaturase gene ... known in the prior art." Office action, p.3 (emphasis supplied). However, the examiner gives no indication that the *specific* delta-6 desaturase gene presently claimed was known in the prior art. Accordingly, the finding of a lack of unity of invention is incomplete, and all claims should be examined together.

Applicants elect Group I as defined by the examiner, with traverse, as described above.

In view of the foregoing amendments and remarks, applicants consider that the rejections of record have been obviated and respectfully solicit passage of the application to issue.

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Respectfully submitted,
KEIL & WEINKAUF



David C. Liechty
Reg. No. 48,692

1350 Connecticut Ave., N.W.
Washington, D.C. 20036
(202)659-0100

DCL/lc